



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Maxine Mendes
200 Center Road
Bradford, NH 03221

ADMINISTRATIVE ORDER
No. WMD 04-03

April 12, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Maxine Mendes pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Maxine Mendes is an individual having a mailing address of 200 Center Road, Bradford, NH 03221.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. Maxine Mendes is the owner of land at 200 Center Road, Bradford, NH, more particularly described in a deed recorded in the Merrimack County Registry of Deeds at Book 2503, Page 827, and identified on Bradford Tax Map 6 as Lot 95A ("the Site").
3. On November 17, 2003, DES received a complaint from Ms. Mendes alleging that Paul Gross, Bradford Excavating & Equipment Moving, Inc. ("Bradford Excavating") buried an old mobile home at the Site. Ms. Mendes also sent in copies of photographs documenting the burial of the mobile home at the Site.
4. On December 12, 2003, DES received a complaint from Paul Gross alleging that Ms. Mendes contracted with Bradford Excavating to bury the mobile home at the Site and that this occurred under the direction and supervision of Ms. Mendes. Mr. Gross' complaint also alleges that Ms. Mendes informed him that she had obtained permission from the town to bury the mobile home at the Site as long as there were no hazardous wastes inside the mobile home.

5. On November 24, 2003, DES personnel investigated the complaint by meeting with Ms. Mendes. The purpose of the meeting was to determine Ms. Mendes' compliance status relative to RSA 149-M and the Solid Waste Rules.
6. During the November 24, 2003 meeting, Ms. Mendes informed DES personnel that she was aware that burying the mobile home at the Site was illegal. Ms. Mendes stated that Bradford Excavating buried the mobile home at the Site on April 26, 2003.
7. On November 24, 2003, DES personnel also met with Paul Gross, Bradford Excavating. Mr. Gross informed DES personnel that he buried the mobile home at the rear of the Site at the direction of Ms. Mendes. Mr. Gross acknowledged that he bears some responsibility for not checking with the town first.
8. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
9. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
10. Env-Wm 102.42 defines "construction and demolition debris" in part, as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks."
11. The mobile home trailer buried by Bradford Excavating at the Site is a solid waste as defined by RSA 149-M:4, XXII.
12. RSA 149-M:4, IX defines a "[solid waste] facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."
13. The Site constitutes a "solid waste facility" as defined by RSA 149-M:4, IX
14. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a [solid waste] facility."
15. Ms. Mendes is the owner of a solid waste facility.
16. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."

17. A review of DES files shows that Ms. Mendes has not applied for or hold a permit to operate a solid waste facility at any New Hampshire location.
18. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility."
19. Solid waste has been disposed at the Site. This Site is not approved to accept solid waste.

D. DETERMINATION OF VIOLATIONS

1. Maxine Mendes has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.
2. Maxine Mendes has violated RSA 149-M:9, II by failing to dispose of solid waste at a permitted solid waste facility.

E. ORDER

Based on the above findings, DES hereby orders Maxine Mendes as follows:

1. **Immediately** cease operating an unpermitted solid waste facility.
2. **Immediately** cease disposing of solid waste at an unpermitted facility.
3. **By June 15, 2004**, remove all solid waste at the Site to a facility or facilities permitted to accept such wastes.
4. **Within 10 days of the proper disposal of the solid waste**, forward copies of disposal receipts to DES.
5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Carl Woodbury, Supervisor
Special Investigations Section
Department of Environmental Services
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-2456
e-mail: cwoodbury@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Maxine Mendes of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Maxine Mendes remains obligated to comply with all applicable requirements, in particular RSA 149-M. DES will continue to monitor Maxine Mendes' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.



Anthony E. Giunta, P.G., Director
Waste Management Division



Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 1670 0000 0584 3557

cc: DB/FILE
Gretchen Rule, DES Legal Unit
Public Information Coordinator, DES
Jennifer Patterson, Sr. Assistant Attorney General
Town Clerk, Bradford, NH
Merrimack County Registry of Deeds
Paul Gross, Bradford Excavating

Enclosures: AO Fact Sheet CO-7